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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 337 (JPO)

5 TODD CAPSER,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 June 4, 2019  
10:05 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 United States Attorney for the  
17 Southern District of New York  
18 BENJAMIN SCHRIER  
19 Assistant United States Attorney

20 FEDERAL DEFENDERS OF NEW YORK  
21 Attorneys for Defendant  
22 BY: PHILIP WEINSTEIN

23  
24 ALSO PRESENT: STEPHEN MINIKEL, FBI  
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(Case called)

MR. SCHRIER: Good morning, your Honor, Ben Schrier for the government, joined at counsel table by FBI Agent Steve Minikel.

THE COURT: Good morning.

MR. WEINSTEIN: Phil Weinstein, Federal Defenders, for Mr. Capser.

THE COURT: Good morning. The indictment in this case contains three counts, one count of conspiracy to commit wire fraud, one count of wire fraud and one count of aggravated identity theft. I understand, but I want to confirm that Mr. Capser has previously been arraigned and bail has been set.

MR. SCHRIER: That's correct, your Honor.

THE COURT: And Mr. Weinstein, have you been appointed counsel?

MR. WEINSTEIN: Yes, I was at the arraignment on Thursday.

THE COURT: For all purposes?

MR. WEINSTEIN: Yes, for all purposes.

THE COURT: And you filled out a financial affidavit?

MR. WEINSTEIN: I did.

THE COURT: Make sure you fill it out on the docket because there's no appearance on ECF.

MR. WEINSTEIN: Okay.

THE COURT: Mr. Capser, I am Judge Oetken, and I have

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1     been assigned your case and I will be overseeing the case.

2             I will start by asking Mr. Schrier to please generally  
3     describe the categories of discovery and the plan or status of  
4     discovery.

5             MR. SCHRIER: Certainly, your Honor. No discovery has  
6     been produced to date, as the defendant was just presented and  
7     arraigned last Thursday. Sort of to jump ahead, I expect that  
8     the government will be able to produce all discovery one month  
9     from today, and I discussed this with Mr. Weinstein, he seems  
10    to think that's a reasonable production schedule. The  
11    discovery in this case will largely consist of emails,  
12    contracts and related documents, a limited number of audio  
13    recordings, and subpoena returns for telephone records and the  
14    like.

15            THE COURT: Any post-arrest statements, any wiretaps?

16            MR. SCHRIER: No wiretaps. In terms of post-arrest  
17    statements, the defendant did meet with the FBI prior to being  
18    indicted. The FBI was speaking with the defendant's father,  
19    who is described as CC-1 in the indictment. The defendant  
20    learned of this and voluntarily came over to the house where  
21    this discussion was taking place and made certain statements to  
22    the FBI. The defendant also then several days later met with  
23    the FBI with counsel present and made additional statements.

24            In terms of post-arrest statements in Montana where  
25    the defendant was ultimately arrested, a small number of

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1 post-arrest statements, nothing particularly substantive.

2 THE COURT: Thank you. So Mr. Weinstein, as you know,  
3 we can do one of two things, we could set a motion schedule and  
4 trial date now, but I'm also fine with setting a date in  
5 whatever reasonable period of time it would be for you to have  
6 a chance to review discovery and come back and see if there are  
7 any motions and come back to set a motion schedule, if  
8 necessary, and/or a trial date.

9 MR. WEINSTEIN: I think the latter would be more  
10 practical. After speaking with the government about the amount  
11 of discovery, I would say we should come back in early August.

12 THE COURT: Is that okay with the government?

13 MR. SCHRIER: Yes, your Honor.

14 THE COURT: Are there particular days that are better  
15 or worse just in terms of travel and things like that, Monday  
16 versus Friday, versus middle of the week?

17 MR. WEINSTEIN: Any day of the week.

18 THE COURT: Okay. How about Monday, August 5, is that  
19 good for you all?

20 MR. WEINSTEIN: That's fine.

21 THE COURT: Let's make it August 5th at -- could we  
22 make it 2 o'clock or 2:30? Let's make it 2:30.

23 MR. WEINSTEIN: That's fine.

24 THE COURT: The next conference will be August 5, 2019  
25 at 2:30 p.m. here in this courtroom, and I will check with

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1 counsel on whether you and the defendant have had a chance to  
2 review discovery, and if you expect to file any motions we'll  
3 set a schedule for any motions, and otherwise get an update on  
4 anything else that I need to know.

5 Is there anything else that you wanted to address  
6 today?

7 MR. SCHRIER: Yes, your Honor, the government would  
8 ask that time be excluded until August 5 so that the government  
9 could produce and the defense can review discovery, and the  
10 government and defense can discuss potential --

11 MR. WEINSTEIN: No objection.

12 THE COURT: I grant the application and exclude the  
13 time under the Speedy Trial Act until August 5, 2019. I find  
14 the ends of justice outweigh the interests of the public and  
15 the defendant in a speedy trial for the reasons stated by the  
16 government, and I'll see you all on August 5.

17 Thank you, we're adjourned.

18 (Adjourned)

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